

Order

Michigan Supreme Court
Lansing, Michigan

November 18, 2005

Clifford W. Taylor,
Chief Justice

128854

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 128854
COA: 260473
Leelanau CC: 03-001353-FC

CLIFTON H. MINIER,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the April 19, 2005 order of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we REMAND this case to the Leelanau Circuit Court for resentencing. The circuit court erred in assessing defendant 5 points on Offense Variable 3 (physical injury to victim) because no “[b]odily injury not requiring medical treatment occurred to a victim” as a result of the CSC-I offense for which defendant was sentenced. MCL 777.33(1)(e). The facts cited by the trial court in support of its score related to a prior offense. On remand, the court shall sentence defendant within the appropriate sentencing guidelines range, or articulate on the record a substantial and compelling reason for departing from the sentencing guidelines range in accordance with *People v Babcock*, 469 Mich 247 (2003). In all other respects leave to appeal is DENIED.

We do not retain jurisdiction.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 18, 2005

Corbin R. Davis

Clerk